UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,431	01/22/2001	William M. Johns	111788.00101	9036

27557	7590	07/13/2006

EXAMINER
TRUONG, LAN DAI T

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WASHINGTON, DC 20037

ART UNIT	PAPER NUMBER
2152	

DATE MAILED: 07/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/765,431	JOHNS ET AL.
	Examiner	Art Unit	
	Lan-Dai Thi Truong	2152	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>03</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>05 April 2006</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>22 January 2001</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____.

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in

37 CFR 1.17(e), was filed in this application after final rejection. Since this application is

eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e)

has been timely paid, the finality of the previous Office action has been withdrawn pursuant to

37 CFR 1.114. Applicant's submission filed on 04/05/2006 has been entered.

2. This action is response to communications: application, filed on 01/22/2001;

amendment filed 04/05/2006. Claims 1-14 are pending; claim 1 is amended

3. The applicant's arguments file on 04/05/2006 have fully considered but they are moot

in view with new ground for rejections

Claim rejections-35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of
making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to
which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth
the best mode contemplated by the inventor of carrying out his invention.

Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the

enablement requirement. The claim(s) contains subject matters such as "entry servers," and "the

pseudo message" which were not described in the specification in such a way as to enable one

skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or

use the invention

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Regarding claim 1, the phrase "...performance monitor process watching network activity to and from the application servers to entry servers <u>for connection to the end user's</u> <u>workstations</u>..." renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. Examiner does not clearly understand where the end user's workstations be connected to, See MPEP § 2173.05(d).

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 recites the limitation "the log" in page 2, line 12. There is insufficient antecedent basis for this limitation in the claim

Claim rejections-35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or descrybed as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1 and 3 are rejected under 35 U.S.C 103(a) as being un-patentable over Lamberton et al. (U.S. 6,931,452) in view of Mangipudi et al. (U.S. 7,058,704) further in view of Caccavale (U.S. 5,459,837)

__Regarding to claim 1:__

Lamberton discloses the invention substantially as claimed, including a method, which can be implemented in a computer hardware or software code for monitoring performance and availability of application servers on a network, including a percentage of time that each of the application servers is available to an end user relative to the time the application servers are intended to be available and a responsiveness of the application servers to the end user in terms of a delay between the end user's entering data into a workstation keyboard and a response from one of the application servers with new data on the user's workstation screen, the method comprising:

Running at least one performance monitor process on the network (Lamberton discloses a monitoring device is operable to monitor network routers: abstract, lines 9-15), said at least one performance monitor process watching network activity to and from the application servers to entry servers for connection to the end user's workstation (Lamberton discloses method for performing monitor process watching network activities of routers causes selecting "an available router" which is equivalent to "entry server" from the set of possible routers for establishing connection between a workstation and "a host" which is equivalent to "application server": abstract, lines 1-15; column 3, lines 57-67; figure 1, items 10, 12, 14, 26, 28, 16, 18, 20)

However, Lamberton does not explicitly disclose creating a transaction response time log and activity audit trail for the network; consolidating information from the log

In analogous art, Mangipudi discloses communications between clients and plurality of

host sites; each host site includes log file stores information such as response time and/ how long

the host site takes to complete a specified request. Mangipudi also discloses network resources

can be measured and audit reports can be generated, See: (figure 1, item 102, 208A, 208B, 208C,

208D; column 6, lines 35-47; column 1, lines 25-30)

Further more, Mangipudi discloses a monitoring system includes an accumulator which

performs combining information from log files to deposit into an SLA database, see (column 4,

lines 1-31)

Thus, it would have been obvious to a person of ordinary skill in the art at the time the

invention was made to combine Mangipudi's ideas of combination information from log files

with Lamberton's system in order to provide an efficiency reporter system, see (Mangipudi:

column 3, lines 19-34)

However, Lamberton- Mangipudi does not explicitly disclose establishing a connection

from the network monitor manager process to at least one performance monitor process to

control at least one performance monitor (in analogous art, Caccavale discloses communications

between " a Broker-Performance Mechanism" which is equivalent to " network monitor

manager" and "probes" which execute "network monitor manager processes" in various clients

such as measuring response times of the clients; the Broker-Performance Mechanism places

probes into various clients and requests the probes to perform measuring client response times:

abstract lines 1-15) to send a pseudo message for tracking time in the network to an entry server

to determine said network availability: (Caccavale discloses the Broker-performance Mechanism

makes its "suggestion" which is equivalent to "pseudo message" to "a client" which is equivalent

to "entry server" to determine the best suited server, at particular time, to perform the particular

service for the request client based upon results of analyzing measured response times: column 3,

lines 1-31); receiving the pseudo message to determine where problems exist within the network

connection for the entry server: (Caccavale discloses the broker-performance mechanism sends

its "alert" which is equivalent to "pseudo message" to indicate the potential problems in the

network: column 6, lines 47-54)

Thus, it would have been obvious to a person of ordinary skill in the art at the time the

invention was made to combine Caccavale's ideas of measuring response times to determine

available network and network problems, and then sending messages to indicate available

network and network problems with Lamberton- Mangipudi's system in order to provide an

efficiency network monitoring and analyzing system, see (Caccavale: column 1, lines 7-14)

Regarding to claim 3:

In addition to rejection in claim 1, Lamberton- Mangipudi- Caccavale further discloses

running a client-server monitoring process on a server dedicated to the client-server monitoring

process: (Caccavale discloses the broker-performance mechanism requests probes to perform

network monitoring such as measuring response times: column 1, lines 1-67; column 2, lines 1-

67)

receiving, in the client-server monitoring process, information about transactions

executed by production applications on the network: (Caccavale discloses the broker-

performance mechanism stores collected measuring response times for future analyzing: column

1, lines 1-67; column 2, lines 1-67; column 3, lines 1-31)

determining performance and availability of the production applications in accordance with

the information received (Caccavale discloses the broker-performance mechanism makes its

suggestion about the best suited server for service request based upon results of analyzing the

received measuring response times: column 1, lines 1-67; column 2, lines 1-67; column 3, lines

1-31)

Thus, it would have been obvious to a person of ordinary skill in the art at the time the

invention was made to combine Caccavale's ideas of measuring response times to determine

available network and network problems with Lamberton- Mangipudi's system in order to

provide an efficiency network monitoring and analyzing system, see (Caccavale: column 1, lines

7-14)

Claims 4-8 and 12-13 are rejected under 35 U.S.C 103(a) as being un-patentable

over Lamberton-Mangipudi-Caccavale in view of Badt Jr. (U.S. 2003/0133417)

Regarding to claim 4:

Lamberton-Mangipudi-Caccavale discloses the invention substantially as disclosed in

claim 3, but does not explicitly teach running a filtering agent on each or on behalf of each of the

production applications to convert the information from application logs into a form usable by

the client-server monitoring process (Badt: [0086-0088], features a signal conversion aspect of

Badt to convert signals into network monitor compatible format)

Thus, it would have been obvious to a person of ordinary skill in the art at the time the

invention was made to combine Badt's ideas of converting signals into network monitor

compatible format with Lamberton-Mangipudi-Caccavale's system in order to provide an

efficiency network monitoring and analyzing system

Regarding to claim 5:

In addition to rejection in claim 4, Lamberton-Mangipudi-Caccavale-Badt further

discloses the network comprises a mainframe having at least one logical partition which

generates an application log (Badt: [0178]); and the application log through a mainframe

monitoring process (Badt: [0178]; [0174])

Thus, it would have been obvious to a person of ordinary skill in the art at the time the

invention was made to combine Badt's ideas of using application log through monitoring process

with Lamberton-Mangipudi-Caccavale's system in order to provide an efficiency network

monitoring and analyzing system

Regarding to claim 6:

In addition to rejection in claim 5, Lamberton-Mangipudi-Caccavale-Badt further

discloses the application log comprises transaction entries having end-user addresses (Badt:

[01781); and step (1) comprises categorizing the transaction entries by the end-user addresses

(Badt: [0174]; [0178])

Thus, it would have been obvious to a person of ordinary skill in the art at the time the

invention was made to combine Badt's ideas of using application log comprises transaction

entries with Lamberton-Mangipudi-Caccavale's system in order to provide an efficiency network

monitoring and analyzing system

Regarding to claim 7:

In addition to rejection in claim 6, Lamberton-Mangipudi-Caccavale-Badt further

discloses generating a performance report for the network through an administrative process and

making the report available over a data network (Badt: [0178], wherein over available capacity
of the network is generated)

Thus, it would have been obvious to a person of ordinary skill in the art at the time the
invention was made to combine Badt's ideas of generating a performance report for the network
with Lamberton-Mangipudi-Caccavale's system in order to provide an efficiency network
monitoring and analyzing system

Regarding to claim 8:

In addition to rejection in claim 7, Lamberton-Mangipudi-Caccavale-Badt further
discloses wherein the data network comprises the Internet (Badt: [0148])

Thus, it would have been obvious to a person of ordinary skill in the art at the time the
invention was made to combine Badt's ideas of monitoring the network performances with
Lamberton-Mangipudi-Caccavale's system in order to provide an efficiency network monitoring
and analyzing system

Regarding to claim 12:

In addition to rejection in claim 4, Lamberton-Mangipudi-Caccavale-Badt further
discloses filtering agent detects processes running on the network and cross-references the
detected processes to known processes, and further comprising forming an event correlation
engine in accordance with the detected processes (Badt: [0086-0088]; [0174])

Thus, it would have been obvious to a person of ordinary skill in the art at the time the
invention was made to combine Badt's ideas of using correlation engine to collect monitoring
information in order to detected processes with Lamberton-Mangipudi-Caccavale's system in
order to provide an efficiency network monitoring and analyzing system

Regarding to claim 13:

In addition to rejection in claim 12, Lamberton-Mangipudi-Caccavale-Badt further

discloses filtering agent detects changes to the processes running on the network, and further

comprising maintaining the event correlation engine in accordance with the detected changes to

the processes (Badt: [0086-0088]; [0174]; [0178])

Thus, it would have been obvious to a person of ordinary skill in the art at the time the

invention was made to combine Badt's ideas of using correlation engine to collect monitoring

information in order to detected processes with Lamberton-Mangipudi-Caccavale's system in

order to provide efficiency network monitoring and analyzing system

Claim 2 is rejected under 35 U.S.C 103(a) as being un-patentable over Lamberton-

Mangipudi-Caccavale in view of Hemphill (U.S. 5,696,895)

Regarding to claim 2:

Lamberton-Mangipudi-Caccavale discloses the invention substantially as disclosed in

claim 1, but does not explicitly teach detecting at least one possibly failed component of the

network; sending a message from the at least one availability monitor process to the at least one

possibly failed component; and determining whether the at least one possibly failed component

has failed.

In an analogous art, Hemphill teaches of plurality of systems exchanging heartbeat

messages, the recovery agents are doing monitoring of network statuses through these heartbeat

messages. In event of a potential failure the recovery agent will no longer receive heartbeat

messages, a confirmation message is sent out to the device being monitored to verify its status,

and if there is no response, the device being monitored is determined to have failed: (column 6, lines 1-67)

It would have been obvious to the person ordinary skill in the gut at the time of the invention to combine Hemphill's ideas of detecting network failure component and sending message to indicate the failure of network component with Lamberton-Mangipudi-Caccavale's system in order to provide an efficiency network monitoring and analyzing system such as it would results in enhancing the error detection capabilities in the network as there is an extra verification step to make sure there is indeed an error

Claims 9-11 are rejected under 35 U.S.C 103(a) as being un-patentable over Lamberton-Mangipudi-Caccavale-Badt in view of Dattatri (U.S. 2002/0049815)

Regarding to claim 9:

Lamberton-Mangipudi-Caccavale-Badt discloses the limitation substantially as claimed, as described in claim 8, but does not explicitly teach receiving, in the client-server monitoring process, information about transactions executed by ecommerce applications on the network; and determining performance and availability of the e-commerce applications in accordance with the information received through an e-commerce monitoring process.

Dattatri teaches a network monitoring system operating under e-commerce environment keeping track of network transactions, specifically, Dattatri teaches a system for commercial communications in which communication between trading partners is tracked so that information goes to a desired trading partner in a timely manner and in' which receipt can be verified. Dattari teaches: receiving, in the client-server monitoring process, information about transactions executed by e-commerce applications on the network (Dattatri: [0111]; [0110]); and determining

performance and availability of the e-commerce applications in accordance with the information

received in step (n) through an e-commerce monitoring process (Dattatri: [01 10]; [0115];

[0078]).

It would have been obvious to combine teachings of Lamberton -Mangipudi-Caccavale-

Badt'ideas and Dattatri's ideas in order to monitor transactional processes in an e-commerce

environment for potential errors (Dattatri, [0008]; [0017]).

Regarding to claim 10:

In addition to rejection in claim 9, Lamberton-Mangipudi-Caccavale-Badt- Dattatri

further discloses wherein at least one of the e-commerce applications makes at least one Web

page accessible to customers, and placing code in the at least one Web page, the code sending

time stamps to the client-server monitoring process when the code is accessed.

Dattatri teaches a network monitoring system operating under e-commerce environment

keeping track of network transactions, specifically, Dattatri teaches a system for commercial

communications in which communication between trading partners is tracked so that information

goes to a desired trading partner in a timely manner and in which receipt can be verified. Dattatri

teaches: the e-commerce applications makes at least one Web page accessible to customers, and

placing code in the at least one Web page, the code sending time stamps to the client-server

monitoring process when the code is accessed (Dattatri: [0069]; [00881).

It would have been obvious to combine teachings of Lamberton -Mangipudi-Caccavale-

Badt'ideas and Dattatri's ideas in order to monitor transactional processes in an e-commerce

environment for potential errors (Dattatri, [0008]; [0017]).

Regarding to claim 11:

In addition to rejection in claim 10, Lamberton-Mangipudi-Caccavale-Badt- Dattatri

further discloses comprising providing a central data repository, and wherein the network

monitor manager process, the client-server monitoring process, the mainframe monitoring

process, the administrative process, and the a-commerce monitoring process communicate with

one another through the central data repository

Dattatri teaches a network monitoring system operating under e-commerce environment

keeping track of network transactions, specifically, Dattatri teaches a system for commercial

communications in which communication between trading partners is tracked so that information

goes to a desired trading partner in a timely manner and in which receipt can be verified. Dattatri

teaches the e-commerce monitoring process communicate with one another through the central

data repository (Dattatri: Fig 1, 2, wherein system is communicating through the repository for

message back ups).

It would have been obvious to combine teachings of Lamberton -Mangipudi-Caccavale-

Badt'ideas and Dattatri's ideas in order to monitor transactional processes in an e-commerce

environment for potential errors (Dattatri, [0008]; [0017])

Claim 14 is rejected under 35 U.S.C 103(a) as being un-patentable over Lamberton-

Mangipudi-Caccavale-Badt in view of Lin et al. (U.S. 6,405,250)

Regarding to claim 14:

Lamberton-Mangipudi-Caccavale-Badt discloses the invention substantially as disclosed

in claim 13, but does not explicitly teach the performance or the availability of one of the

production applications is impaired, determining and reporting a cause of impairment

However, Lin teaches a network monitoring system based on a. series of agents reporting

to central server, specifically, Lin teaches further monitoring the cause of failure: (Col. 9, lines

35-55).

It would have been obvious to combine teachings of Lamberton-Mangipudi-Caccavale-

Badt' ideas and Lin's ideas in order to determine reasons for failure during a catastrophic event

see for example, (Lin Col. 9, lines 35-55; Col. 2, lines 12-25)
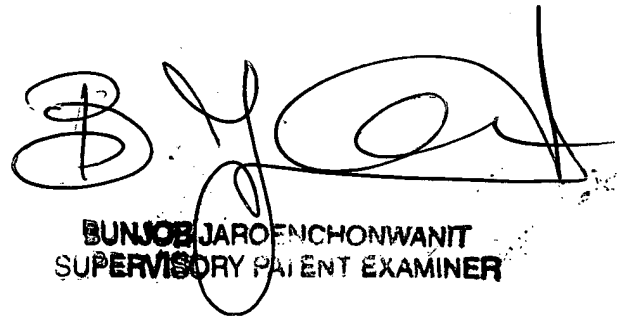

Conclusions

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Lan-Dai Thi Truong whose telephone number is 571-272-7959.

The examiner can normally be reached on Monday- Friday from 8:30am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Bunjob A. Jaroenchonwanit can be reached on 571-272-3913. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

like assistance from a USPTO Customer Service Representative or access to the automated

information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ldt,
06/07/2006

BUNJOB JAROFNCHONWANIT
SUPERVISORY PATENT EXAMINER